

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

David M. Martinko

v.

Case No. 22-cv-238-LM

NH Department of Corrections

ORDER

No objection having been filed, I herewith approve the Report and Recommendation of Magistrate Judge Andrea K. Johnstone dated April 3, 2023. For the reasons explained therein, Martinko's Eighth Amendment claims in this case (Claims 3, 5, 7(a), 7(b)), are dismissed.

To the extent Martinko's RLUIPA claims are asserted against any defendant in his or her individual capacity and to the extent that they seek damages against any defendant in his or her individual or official capacity, those claims are dismissed.

Defendants S. Pasciuto, Paula Mattis, and Abbey Simon, are dropped as parties, as the Complaint and its addenda fail to state a claim upon which relief might be granted against them.

Martinko's Laaman claims and the state constitutional claims (Claims 8 and 9), are dismissed without prejudice to Mr. Martinko's ability to litigate those state law claims in state court.

“‘[O]nly those issues fairly raised by the objections to the magistrate's report are subject to review in the district court and those not preserved by such objection are precluded on appeal.’”

School Union No. 37 v. United Nat'l Ins. Co., 617 F.3d 554, 564 (1st Cir. 2010) (quoting Keating v. Secretary of Health & Human Servs., 848

F.2d 271, 275 (1st Cir.1988)); see also United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986) (after proper notice, failure to file a specific objection to magistrate's report will waive the right to appeal).

A handwritten signature in black ink, appearing to be 'Landya B. McCafferty', written over a horizontal line.

Landya B. McCafferty
Chief Judge

Date: May 9, 2023

cc: David M. Martinko, pro se
Counsel of Record